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Non-Party Respondent

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

NETWORK APPLIANCE, INC.,

Plaintiff-Counterclaim Defendant,

vs.

SUN MICROSYSTEMS, INC.,

Defendant-Counterclaimant.

Case Number: 3:07-CV-06053 EDL (JCS)

**DECLARATION OF MATTHEW J. HULT
IN SUPPORT OF NON-PARTY
RESPONDENT ORRICK HERRINGTON &
SUTCLIFFE, LLP'S OPPOSITION TO SUN
MICROSYSTEMS, INC.'S MOTION TO
COMPEL PRODUCTION OF DOCUMENTS**

**Date: August 12, 2008
Time: 9:30 a.m.
Courtroom: E, 15th Floor
Hon. Elizabeth D. Laporte**

I, Matthew J. Hult, hereby declare as follows:

1. I am a partner in the law firm of Orrick, Herrington & Sutcliffe LLP, and am a member of the Firm's Risk Management Committee. I am licensed to practice law in the State of California and admitted to appear before this Court. The matters contained in this declaration are of my own personal knowledge and, if called as a witness, I could and would testify competently to the matters set forth herein.

1 2. As a member of Orrick's Risk Management Committee, I serve as Orrick's counsel on
2 various matters, including assisting in responding to subpoenas issued on the firm.

3 3. On or about January 22, 2008, counsel for Sun Microsystems ("Sun"), Carrie L.
4 Williamson, served Orrick a subpoena in this action.

5 4. The subpoena called for, *inter alia*, materials from a trade secrets litigation venued in
6 the mid-1990's in Santa Clara County Superior Court, entitled *The Whipsaw Group, et al., v. Network*
7 *Appliance Corporation, etc, at al.*, Santa Clara Superior Court Case No. CV 742186, ("*Whipsaw*
8 *matter*"). In approximately 1995 and 1996, Orrick represented Dr. Michael Malcolm, one of the
9 founders of Network Appliance, in the *Whipsaw* matter. The *Whipsaw* matter was heavily litigated
10 for approximately two years and involved multiple parties and third parties. Several Orrick attorneys
11 and staff worked on the matter. The litigation generated numerous volumes of pleadings,
12 correspondence and other documentation, much of that consisting of attorney work product or
13 otherwise privileged material.

14 5. After receiving the subpoena, Orrick researched whether any materials that may be
15 responsive to the subpoena were still in Orrick's possession. We learned that Orrick still possessed,
16 in an off-site storage facility, files from the *Whipsaw* matter, including the working files of the
17 attorneys and staff who worked on it.

18 6. Orrick did not want to incur expenses litigating to quash Sun's subpoena. At the same
19 time, Orrick wanted to ensure that any response to the subpoena would not distract Orrick attorneys
20 and staff from their client work. As a result, the firm hired a local firm, Schwartz and Cera LLP, to
21 assist it with the review and response to Sun's subpoena.

22 7. On or about July 8, 2008, Sun filed an expedited motion to compel production of
23 documents in response to the subpoena. The Court denied Sun's application for an expedited briefing
24 schedule on or about July 17, 2008. In that Order, the Court required the parties to meet and confer
25 in advance of the hearing on the motion to compel.

26 8. Since the Court issued its Order, I have attempted to meet and confer with Sun's
27 counsel on three separate occasions. On Friday, July 18, I telephoned and left a message for Mark
28 Fowler, one of the DLA partners representing Sun. On Monday, July 21, 2008, I telephoned and left

1 a second message for Mr. Fowler. After not hearing from Mr. Fowler, I then telephoned Christine
2 Corbett, another partner at DLA who represents Sun. Neither Mr. Fowler nor Ms. Corbett returned
3 my voice messages until Ms. Corbett did today at approximately 1:30 PM. By that time, Orrick's
4 opposition papers were essentially complete.

5 9. Though Ms. Corbett and I had a good and frank discussion about the issues related to
6 Sun's motion and the subpoena it served on Orrick, we did not reach agreement over Orrick's copy
7 vendor fees.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed on
9 July 22, 2008 in San Francisco, California.

10
11 /s/
Matthew J. Hult